Supreme Court, U.S.
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No. 02-964

IN THE

Supreme Court of the United States

GEORGE H. BALDWIN,

Petitioner,

v.

MICHAEL REESE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE STATES OF INDIANA, TEXAS, MONTANA, MAINE, MISSOURI, WEST VIRGINIA, UTAH, VERMONT, SOUTH DAKOTA, MISSISSIPPI, NEBRASKA, WASHINGTON, IDAHO, COLORADO, ALASKA, AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

By statute and the Court's caselaw, a state prisoner must exhaust available state court remedies on direct appeal or through collateral proceedings before a federal court may consider granting relief through *habeas corpus* proceedings. The Court has held that exhaustion requires a state prisoner to "fairly present" his claim to a state's highest court, and that fair presentment requires the prisoner to alert the state court that the claim is federal in nature and substance.

Does a state prisoner "alert" a state's highest tribunal that he is raising a federal claim when he neither cites a specific provision of the federal constitution nor cites at least one authority that has decided the claim on a federal basis?

INTEREST OF AMICI

All states devote considerable resources to defending federal *habeas corpus* actions.[1] These precious resources are diminishing while the *habeas* caseload is increasing. The *amici* jurisdictions embrace and encourage efforts to simplify and expedite the process in ways that will permit the states to deploy their limited resources efficiently and avoid expensive and wasteful briefing.

The petition in this case represents such an effort which the *amici* states endorse. The issue presented is the definiteness and clarity with which a state prisoner must identify his federal claims in state court before raising them in a *habeas* action.

A majority of the federal circuits require only a minimal level of clarity, resulting in analyses that are cumbersome and expensive to apply. Oregon's petition asks the Court, consistent with its recent precedent, to reject those methodologies in favor of one that requires a greater degree of specificity and definiteness. Oregon's analysis inquires only whether state prisoners have explicitly identified their federal claims in their pleadings before the state's highest court. This regime is straightforward and simple to apply, and imposes no undue burden upon *habeas* petitioners.

The frequency with which the question is litigated makes it essential to adopt a uniform exhaustion requirement and analysis that is easy to apply. Over half of federal *habeas* proceedings are eventually dismissed on exhaustion grounds. 6 Wayne R. LaFave *et al.*, *Criminal Procedure* § 28.5(a) (2d ed.) (2003 Pocket Part) (citing a 1995 Department of Justice study). This figure does not account for all cases in which the

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[1] This brief is submitted by the Attorneys General of the amici states pursuant to Rule 37.4.

exhaustion question is litigated and the states' dismissal motions are denied.

Adoption of Oregon's position, by compelling the prior litigation of federal claims in state court, will benefit the federal district courts as well by ensuring they have a competent state court decision on the federal issues to review. Such a regime will also ensure that the greater part of the states' resources will be expended in their own courts, rather than for the first time in the federal system.

Amici states do not seek to strip state prisoners of their right to federal review. *Amici* do seek to minimize the time they must spend addressing procedural issues surrounding *habeas* claims, issues which are unrelated to whether a prisoner's constitutional rights have been violated. In addition, *amici* seek a consistent and realistic methodology that will cull out those claims that have not been fairly presented to the state courts. The greatest concentration of resources should be devoted to the merits of claims that are properly in the federal courts. To this end, the definition and determination of fair presentation should be as simple, efficient, and realistic as possible.

The analysis employed by Oregon would greatly facilitate the states' efforts to target their resources where they belong – at the merits of fairly presented federal claims. *Amici* states therefore ask this Court to grant the State of Oregon's petition for a writ of certiorari, and reverse the decision below.

REASONS FOR GRANTING THE WRIT

To satisfy the exhaustion requirements of 28 U.S.C. § 2254(b) and (c), state prisoners must "fairly present" their federal claims in state court before raising those claims in federal court. *See Anderson v. Harless*, 459 U.S. 4, 7 (1982) (discussing *Picard v. Connor*, 404 U.S. 270 (1971)). State prisoners must "alert" state courts that they are raising federal

claims – that is, they must "say so" in the state courts. *Duncan v. Henry*, 513 U.S. 364, 365 (1995). Prisoners must also present their claims before the state's highest court with jurisdiction to review those claims. *O'Sullivan v. Boerckel*, 526 U.S. 838, 848 – 49 (1999).

Taken together, *Duncan* and *O'Sullivan* stand for the proposition that state prisoners must set out explicitly their federal claims in a state's highest court. Requiring state prisoners to identify clearly their federal claims in state court eliminates the guesswork and subjectivity otherwise involved in determining whether state prisoners intended to raise federal claims in state courts and, if so, what federal claims they intended to present. At least two circuits follow *Duncan* and *O'Sullivan* and require state prisoners to be explicit in presenting their federal claims in the state's highest court before raising them in a *habeas* action. *See, e.g., Isaacs v. Head*, 300 F.3d 1232, 1254 (11th Cir. 2002), *and Baker v. Corcoran*, 220 F.3d 276, 289 (4th Cir. 2000), *cert. denied* 531 U.S. 1193 (2001).

However, and unfortunately, the majority of circuits do not follow *Duncan* and *O'Sullivan*. Rather, these circuit courts employ analyses that attempt to discern whether the state prisoner presented the "substance" of his federal claim in state court. In the two prevailing lines of decision, surveyed in Oregon's petition, the inquiry is whether a state court judge reasonably could have viewed a prisoner's claims as having a federal ground. Because minimal expectation is placed upon prisoners in those jurisdictions, state attorneys find themselves devoting as much, if not more, time addressing the procedural default issue as the merits questions. Inevitably, those attorneys also find themselves responding to federal issues for the first time in the *habeas* action.

The Court accepted *O'Sullivan* to resolve the conflict among the circuits with regard to the highest court to which a claim must be presented. This case presents a similar need

and opportunity to settle a division among the circuits and define "fair presentment."

The State of Oregon's approach is consistent with this Court's recent pronouncements in requiring state prisoners to articulate explicitly in the state's highest court that they are raising federal claims. The briefing and presentment of the "fair presentment" issue is thereby simplified and unified, and no genuine hardship is placed upon prisoners who, in fact, intend to and do raise federal claims in state proceedings. Adoption of Oregon's approach by this Court will resolve the conflict among the circuits in a manner that greatly simplifies the litigation of *habeas corpus* actions, and preserves in the states the resources to devote to the merits of properly preserved federal claims.

CONCLUSION

For the reasons set forth above and in the State of Oregon's petition, the *amici* states respectfully request the Court grant the petition for a writ of certiorari and reverse the decision of the Court of Appeals for the Ninth Circuit.

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